

IT IS ORDERED

Date Entered on Docket: January 5, 2023



The Honorable David T. Thuma
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

IN RE:

MATTHEW J. DOMINGUEZ
OLIVIA D. DOMINGUEZ

Debtors.

Case No. 13-19-10880-TA

**STIPULATED ORDER MODIFYING THE AUTOMATIC STAY
AND PROVIDING FOR THE ABANDONMENT OF PROPERTY**

This matter came before the Court on the Motion for Relief from Automatic Stay for the Abandonment of Property to Carrington Mortgage Services LLC, filed on October 3, 2022, (DOC 72) (the “Motion”) by Carrington Mortgage Services LLC (“Creditor”), and the Debtors’ Objection (the “Objection”) filed on October 28, 2022 (DOC 75). The Court, having reviewed the record, the Motion, the Objection and being otherwise sufficiently informed, FINDS:

a. On October 3, 2022, Carrington Mortgage Services LLC served the Motion and a notice of the Motion (the “Notice”) on Christopher L. Trammell, Attorney for Debtors and Tiffany M. Cornejo, Trustee (the “Trustee”) by use of the Court’s case management and electronic filing system for the transmission of notices, as authorized by Fed.R.Civ.P. 5(b)(3) and NM LBR 9036-1, and on the Debtors Matthew J. Dominguez and Olivia D. Dominguez, by United States first class mail, in accordance with Bankruptcy Rules 7004 and 9014.

b. The Motion relates to the property located at 1423 Cielo Linda Albuquerque, New Mexico 87121, more fully described as:

Lot numbered Twenty-eight-P-One (28-P1), Plat of CIELO LINDO SUBDIVISION, as the same is shown and designated on the plat of said Subdivision, filed in the office of the County Clerk of Bernalillo County, New Mexico, on September 2, 2005, in Plat Book 2005C, Page 298, as Document No. 2005129477.

including any improvements, fixtures, and attachments, such as, but not limited to, mobile homes (the “Property”). If there is a conflict between the legal description and the street address, the legal description shall control.

c. The Notice provided for an objection deadline of 21 days from the date of service of the Notice, to which three days was added pursuant to Bankruptcy Rule 9006(f);

d. The Notice was sufficient in form and content;

e. The objection deadline expired on October 27, 2022;

f. On October 28, 2022 the Debtors filed an Objection to the Motion;

g. As of November 17, 2022, no other party in interest has filed an objection to the Motion;

h. The Court being advised of both the Debtors’ and the Trustee’s consent to the relief requested herein and their approval as to the form of this Order; and the Court having

considered CitiFinancial's Motion, now enter this Order modifying the automatic stay and providing for the abandonment of property in the event of default.

The parties stipulate and agree to the following terms:

1. The Debtors have made payments and cured the post-petition payment amounts due on Carrington Mortgage Services LLC's Adjustable Rate Note (the "Note") and Mortgage. The loan is currently due for January 1, 2023. Creditor shall file a Notice of Post-Petition Mortgage Fees for any bankruptcy attorney's fees and costs due as a result of the default

2. The Debtors shall continue to make their regular monthly mortgage payments in the current amount of \$1,101.16 as they come due (unless otherwise notified by Carrington Mortgage Services LLC), commencing with the January 1, 2023 payment and continuing thereafter.

3. In the event the Debtors fail to tender a payment as due and required by this Order, the movant may file a Notice of Default with the Court, which will be mailed to the Debtors and sent by electronic notification to Debtors' counsel. The Debtors will have ten (10) days from the filing of a Notice of Default to cure the default. There will be \$100.00 in attorney's fees associated with the filing of any such Notice. **The Debtors will only receive two (2) such Notices.** If the Debtors fail to cure the default, including the payment of the above described attorney's fees, within ten (10) days from the filing of a Notice of Default, then upon the movant's filing of an Affidavit of Default, the automatic stay effectuated by Debtors' bankruptcy filing will be lifted as ordered herein, so that Carrington Mortgage Services LLC may avail itself to the rights and remedies afforded under its Note and Mortgage, including but not limited to the right to foreclose against the property if available under State Law.

4. **In the event that the Debtors default a third time, the movant may immediately proceed with the filing of its Affidavit of Default, thereby terminating the automatic stay and abandoning the subject property as ordered herein, so that Carrington Mortgage Services LLC may avail itself to the rights and remedies afforded under its Note and Mortgage, including but not limited to the right to foreclose against the property if available under State Law.**

5. In the event the Debtors default and upon the filing of an Affidavit of Default, the Trustee shall immediately cease making payments to Carrington Mortgage Services LLC pursuant to the Debtors' Chapter 13 Plan, and future payments, if any, will only be made by the Trustee pursuant to an Amended Proof of Claim filed by Carrington Mortgage Services LLC for any unsecured deficiency balance.

IT IS, THEREFORE, THE ORDER OF THIS COURT:

That in accordance with the above agreed upon terms, upon the movant's filing of an Affidavit of Default and pursuant to Section 362(d) of Title 11 of the United States Code (the "Bankruptcy Code"), the automatic stay of Section 362(a) of the Bankruptcy Code is hereby lifted as to the real property identified in Carrington Mortgage Services LLC's Note and Mortgage. Said property is located at 1423 Cielo Linda, Albuquerque, New Mexico 87121 (the "Property"), more fully and completely described as:

Lot numbered Twenty-eight-P-One (28-P1), Plat of CIELO LINDO SUBDIVISION, as the same is shown and designated on the plat of said Subdivision, filed in the office of the County Clerk of Bernalillo County, New Mexico, on September 2, 2005, in Plat Book 2005C, Page 298, as Document No. 2005129477.

including any improvements, fixtures, and attachments, such as, but not limited to, mobile homes. If there is a conflict between the legal description and the street address, the legal description shall control.

That upon default by the Debtors and the filing of an Affidavit of Default, the Property is hereby abandoned pursuant to Section 554 of the Bankruptcy Code, and Carrington Mortgage Services LLC may avail itself to the rights and remedies afforded under the Note and Mortgage, including but not limited to the right to foreclose against the Property if available under State Law.

That upon default by the Debtors and the filing of an Affidavit of Default, the Trustee shall cease making payments to Carrington Mortgage Services LLC pursuant to Debtors' Chapter 13 Plan, and any future payment and/or deficiency owed by the Debtors to Carrington Mortgage Services LLC after sale of the Property shall be set forth in an Amended Proof of Claim filed by Carrington Mortgage Services LLC and shall be subject to the Bankruptcy Code should this bankruptcy continue. If the Note and the obligation therein are fully satisfied and there remain any money-proceeds from the sale of the Property, then such monies will be paid to the Trustee for the benefit of the estate.

That upon the Debtors' default, the filing of the movant's Affidavit of Default, and the termination of the automatic stay and the abandonment of the subject property as provided herein, Fed. R. Bankr. P. 4001(a)(3) is not applicable and/or is waived and Carrington Mortgage Services LLC may immediately enforce and implement relief from the automatic stay and foreclose on the subject property if available under State Law.

This Stipulated Order (the applicable payment and default terms herein) shall remain effective, upon conversion to another chapter bankruptcy.

XXX END OF ORDER XXX

SUBMITTED BY:

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